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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,535	03/26/2001	Hector Franco	HFRANCO.001A	6849

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EXAMINER

THOMPSON JR, FOREST

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/817,535

Applicant(s)

FRANCO, HECTOR

Examiner

Forest Thompson Jr.

Art Unit

3625

MLW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/04/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to applicant's RCE filed 12/04/03 and applicant's amendment C filed on 12/04/2003 (see Paper #8). Applicant's amendment cancelled claims 5 and 15, and amended claims 1, 7, 9, and 16. Claims 1-19 are pending.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action (see Papers #5 & 7), or will be included here for clarity, as necessary. The text of those sections of Title 35, U.S. Code not otherwise provided in a prior Office action will be included in this action where appropriate.
3. Claims 1-19 have been examined.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 9-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Dependent claim 9 states "wherein the selected location is an order" in line 1. Examiner cannot with certainty determine applicant's intended meaning and scope for the claim. Correction is required.

Claims 10-14 depend from rejected dependent 9. Therefore, claims 10-14 are rejected.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-3 and 5-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Zembitski (U.S. Patent No. 6,193,160).

Claim 1. Zembitski teaches:

- on a computer system, for each of a plurality of consumers, associating a plurality of items ordered by the consumer (col. 1 lines 45-51);
- associating a plurality of items ordered by the consumer from a plurality of merchants (col. 2 lines 16-29);
- for each consumer, receiving the associated items at a single geographic location (col. 5 lines 59-63);

Art Unit: 3625

- for each consumer, based at least on the association of the items on the computer system, physically aggregating the items at the location (col. 5 lines 59-63); and
- for each consumer, transferring the aggregated items to the consumer (col. 2 lines 8-12).

Claim 2. Zembitski teaches each of the purchased items is a product or comprises one or more products (Abstract).

Claim 3. Zembitski discloses, on the computer system, for each consumer, receiving notification of a pending delivery of at least one of the items (col. 5 lines 59-63).

Claim 5. (Canceled)

Claim 6. Zembitski teaches transferring the aggregated items to the consumer comprises sending the items to the consumer from the location (col. 2 lines 8-12)..

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zembitski as applied to claim 1 above, and further in view of Shavit et al. (U.S. Patent No. 4,799,156).

Claim 4. Zembitski does not explicitly teach, using the computer system, for each consumer, notifying the consumer that some or all of the plurality of items have been received at the location. However, Shavit et al. teaches *If the user elects to continue with a mail session, the system 50 allows the user to prepare documents and memos, distribute them to a list of addressees, file them for later reference and confirm the delivery or retrieval of messages. In addition, in a mail session, a user can access a daily journal, maintain private and public directories, and interconnect with external private and public delivery services (e.g., telex, mail, etc.). The system mail services handle formatted transaction files which permits it to present such files containing orders, bids, delivery advisories, etc. as incoming or outgoing documents while maintaining their original format thereby allowing data processing of the data contained in the files.* (col. 12 lines 3-16) Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the teaching of Zembitski to explicitly provide delivery advisories to the consumer, as taught by Shavit et al., for the motivation of facilitating a transfer of purchases to consumers and providing customer satisfaction.

10. Claims 7-8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zembitski as applied to claim 1 above, and further in view of Allard et al. (U.S. Patent No. 6,249,773).

Claim 7. Zembitski teaches:

- on a computer system, identifying a plurality of consumers (col. 1 lines 6-10), and for each consumer:
 - identifying an item purchased by the consumer from merchants (col. 1 lines 45-58);
 - for each of a plurality of merchants, identifying an item purchased by the consumer from the merchant (col. 2 lines 16-29).

Zembitski does not explicitly teach, for each consumer presenting to the consumer a set of at least one predetermined geographic locations from which set the consumer is prompted to make a selection; receiving from the consumer a selection of a geographic location from the set; for each of the merchants, providing to the merchant instructions to send the item to the selected geographic location. However, Allard et al. teaches *The method can further comprise the step of delivering the purchased products to the shoppers at a pickup location or delivering the purchased products to the shoppers at locations selected by the shoppers* (col. 2 lines 59-62). This teaching encompasses the claim language of applicant. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the teaching of Zembitski to explicitly deliver the purchased products to the shoppers at a pickup

location or delivering the purchased products to the shoppers at locations selected by the shoppers, as taught by Allard et al., for the motivation of facilitating the transfer of products to consumers.

Claim 8. Zembitski teaches each of the purchased items is a product or comprises one or more products (Abstract).

Claim 15. (canceled)

11. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zembitski as applied to claim 1 above, and further in view of Shavit et al. (U.S. Patent No. 4,799,156) and Allard et al. (U.S. Patent No. 6,249,773).

Claim 16. Neither Zembitski nor Allard et al. explicitly teaches instructing the consumer to receive the items at the selected location. However, Shavit et al. teaches *If the user elects to continue with a mail session, the system 50 allows the user to prepare documents and memos, distribute them to a list of addressees, file them for later reference and confirm the delivery or retrieval of messages. In addition, in a mail session, a user can access a daily journal, maintain private and public directories, and interconnect with external private and public delivery services (e.g., telex, mail, etc.). The system mail services handle formatted transaction files which permits it to present such files containing orders, bids, delivery advisories, etc. as incoming or outgoing documents while maintaining their original format thereby allowing data processing of*

the data contained in the files. (col. 12 lines 3-16) Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the teachings of Zembitski and Allard et al. to explicitly provide delivery advisories to the consumer, as taught by Shavit et al., for the motivation of facilitating a transfer of purchases to consumers and providing customer satisfaction.

12. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zembitski as applied to claim 1 above, and further in view of Shavit et al. (U.S. Patent No. 4,799,156), Allard et al. (U.S. Patent No. 6,249,773) and Official Notice.

Claim 17. Neither Zembitski, Hicks nor Allard et al. teach receiving from the consumer, an identification of a time at which the consumer will expect to receive the items. However, Official Notice is taken that customers specifying times for receiving times for delivery of items was old and well known in the art at the time the invention was made. Many times, a customer must approve/sign for the delivery, and therefore, must coordinate a time that the customer is available to receive the item. An example of this is the delivery of appliances or furniture from merchants to customers' homes or other addresses. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosure of Zembitski to explicitly receive from the consumer an identification of a time at which the consumer will expect to receive the items, as disclosed by old and well known art, for the motivation of facilitating a transfer of purchases to consumers and providing customer satisfaction.

13. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zembitski as applied to claim 1 above, and further in view of Hicks (U.S. Patent No. 6,615,184).

Claim 18. Zembitski does not explicitly teach presenting to the consumer at least one geographic location at which the consumer can receive the items, obtaining from the consumer a selection of one of the locations, nor notifying the merchants of the identity of the location selected by the consumer. However, Zembitski does teach preparing orders by picking products from a storage area, such as the installations being used in the food products industry for loading parcels according to orders to be met, and for delivering independently into each parcel (col. 1 lines 6-10).

Also, Hicks teaches:

- presenting to the consumer at least one geographic location at which the consumer can receive the items (col. 3 lines 4-13);
- obtaining from the consumer a selection of one of the locations (col. 3 lines 4-13); and
- notifying the merchants of the identity of the location selected by the consumer (col. 3 lines 4-13).

Therefore, it would have been obvious to modify the teachings of Zembitski to explicitly disclose presenting to the consumer at least one geographic location at which the consumer can receive the items, obtaining from the consumer a selection of one of

Art Unit: 3625

the locations, and notifying the merchants of the identity of the location selected by the consumer, as taught by Hicks, for the motivation of facilitating a transfer of purchases to consumers.

14. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zembitski as applied to claim 1 above, and further in view of Schlamp (U.S. Patent No. 5,431,250) and Diamond et al. (U.S. Patent No. 6,370,515).

Claim 19. Zembitski teaches:

- an order aggregation facility where products picked from the temporary bulk storage facilities can be physically aggregated (col. 2 lines 22-39);
- loading and unloading docks for trucks to deliver and pick up shipments (col. 1 line 59 – col. 2 line 21);
- a recipient vehicle loading and unloading facility for transferring items to consumers (col. 1 line 59 – col. 2 line 21) ; and
- a computing system configured to coordinate transfers of items from merchants to consumers (col. 1 lines 45-51).

However, Zembitski does not explicitly teach a set of temporary bulk storage facilities that provide a selection of appropriate environments to temporarily store products, nor a communications system configured to electronically communicate with the merchants and consumers. Also, Schlamp does teach a set of temporary bulk storage facilities that provide a selection of appropriate environments to temporarily store

Art Unit: 3625

products (col. 4 lines 28-30), in the disclosure *The product distribution station 31 can expediently be subdivided into an area with cooled sections and an area with uncooled sections*. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of Zembitski to explicitly teach the product distribution station can expediently be subdivided into an area with cooled sections and an area with uncooled sections, as taught by Schlamp, for the motivation of providing environmental conditions to products while in the set of temporary storage facilities to facilitate the transfer of products to consumers.

Also, Diamond et al. teaches a communications system configured to electronically communicate with the merchants and consumers (col. 7 lines 7-48; fig. 8 [46, 48, 50, 54, 56, 57, 70,]). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the teachings of Zembitski to explicitly teach a communications system configured to electronically communicate with the merchants and consumers, as disclosed by Diamond et al., facilitating the transfer of purchases from merchants to customers.

Response to Arguments

15. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

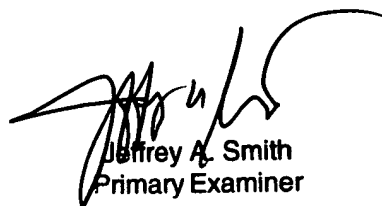
Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forest Thompson Jr. whose telephone number is (703) 306-5449. The examiner can normally be reached on 6:30 AM-3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FT 
20 February 2004


Jeffrey A. Smith
Primary Examiner